



An Ordinance Amending Section 2 and Section 6 of Ordinance No. 2909-06, Critical Areas (EMC 19.37) Concerning Pruning and Removal of Non-Hazardous Trees in Critical Area Buffers outside of Shoreline Jurisdiction, and Amending Section 3B of Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16.080).

WHEREAS, the City Council finds the following:

1. The City of Everett adopted Ordinance No. 2909-06 establishing new standards, codified as EMC Chapter 19.37, for the protection of Critical Areas pursuant to the Growth Management Act RCW Chapter 36.70A;
2. The standards of EMC 19.37 are based upon "best available science" and any amendments to Critical Areas regulations must also be based upon best available science;
3. The City's Critical Areas regulations pertaining to management of vegetation within critical areas and buffer areas are among the most restrictive among peer jurisdictions within the central Puget Sound;
4. The City may not authorize the removal of non-hazardous trees in critical areas under most circumstances under the current regulations;
5. This rigid regulation has resulted in numerous instances of illegal tree cutting, pruning and removal within critical area buffers;
6. The City proposes to establish more flexibility through a permit system to allow for the pruning of trees and, under certain circumstances, the removal and replacement of trees within critical area buffers to reduce the instance of illegal cutting and impacts to critical area resources and habitat in Everett;
7. The Planning Department, with assistance from an environmental consultant, conducted peer research of other municipal and county critical area regulations that were adopted under the standards of best available science to determine if other jurisdictions' critical area regulations provided the flexibility desired;
8. The City did find several examples of critical area regulations that allow for a more flexible approach to the pruning or removal and replacement of trees within critical area buffers;
9. The Planning Commission held several public workshops and hearings to gather input from staff and the public concerning possible amendments to the City's Critical Areas regulations;
10. The City conducted a SEPA environmental review of the proposed changes to its Critical Areas regulations, including review by the Washington State Department of Ecology; and
11. Based on public comment during the Planning Commission public planning process, several revisions were made to ensure adequate flexibility and sufficient safeguards to balance the desired flexibility with environmental protection and monitoring of properties that have been permitted to prune or remove and replace trees in critical area buffers.

And, WHEREAS, the City Council concludes the following:

1. The proposed amendments to the City's land use regulations are consistent with the Everett Growth Management Comprehensive Plan;
2. The proposed amendments bear a substantial relation to the public health, safety and welfare; and
3. The proposed amendments promote the best long term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Section 2 of Ordinance No. 2909-06, as amended, which reads as follows:

Purpose.

Erosion, flood, landslide, and seismic hazard areas, streams, wetlands, protective buffers, and wildlife habitat areas constitute critical areas that are of special concern to the city. The purpose of this chapter is to designate, classify and protect the critical areas of the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

- A. Preserving, protecting, and restoring critical areas by regulating development within such areas and their buffers;
- B. Mitigating unavoidable adverse impacts by regulating alterations when protection cannot be required;
- C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;
- D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:
 1. Unnecessary maintenance and replacement of public facilities,
 2. Publicly funded mitigation of avoidable impacts,
 3. Public costs for emergency rescue and relief operations where the causes are avoidable, or
 4. Degradation of the natural environment;
- E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;
- F. Alerting appraisers, assessors, owners, potential buyers or lessees to the presence of critical areas and the respective development limitations of such areas;

G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals; and

H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 20.04 of the Everett Municipal Code, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city. (Ord. 2909-06 § 2, 2006)

Is hereby amended to read as follows:

Purpose.

Erosion, flood, landslide, and seismic hazard areas, streams, wetlands, protective buffers, and wildlife habitat areas constitute critical areas that are of special concern to the city. The purpose of this chapter is to designate, classify and protect the critical areas of the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

A. Preserving, protecting, and restoring critical areas by regulating development within such areas and their buffers;

B. Mitigating unavoidable adverse impacts by regulating alterations when protection cannot be required;

C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;

D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:

1. Unnecessary maintenance and replacement of public facilities,
2. Publicly funded mitigation of avoidable impacts,
3. Public costs for emergency rescue and relief operations where the causes are avoidable, or
4. Degradation of the natural environment;

E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;

F. Alerting appraisers, assessors, owners, potential buyers or lessees to the presence of critical areas and the respective development limitations of such areas;

G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals; and

H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 20.04 of the Everett Municipal Code, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city. (Ord. 2909-06 § 2, 2006)

I. Providing for the maintenance and enhancement of views, solar access, and/or elimination of future potential hazards or nuisances while protecting critical area functions and values.

Section 2: Section 6 of Ordinance No. 2909-06, as amended (EMC 19.37.060), which reads as follows:

Permitted uses and activities.

A. Uses permitted on lots containing or adjoining critical areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this chapter and other city, state, and federal regulations.

B. The following uses/activities are permitted in critical areas and their buffers:

1. Minor utility construction projects. Utility projects which have minor or short-duration impacts to critical areas, provided such projects are constructed using best management practices to avoid and minimize impacts to critical areas and required buffers, subject to the following criteria:

a. The activity does not significantly impact a Type F stream or category 1 wetland, or a fish and wildlife habitat conservation area; and

b. There is no reasonable alternative to the proposed activity with less impact on the critical area; and

c. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility; and

d. The activity results in disturbing less than one hundred square feet of critical area and buffer.

2. Buffer management when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted subject to written approval from the director:

a. Hazard tree removal with replanting. The removal of hazard trees from critical areas and required buffers subject to the replanting of native trees to maintain critical area and buffer

functions. Hazard trees are those trees that pose a threat to public safety, or pose an imminent risk of damage to private property.

i. The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, an assessment and recommendation from a certified arborist, registered landscape architect or professional forester that documents the hazard and provides a replanting schedule for replacement trees.

ii. Where hazards can be eliminated without complete removal of the tree, the director may require that a wildlife snag remain in the critical area or required buffer.

iii. Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two trees for every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan.

iv. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified biologist shall be consulted to determine timing and methods of removal that will minimize impacts. The biologist's report shall be circulated to agencies with expertise for review and comment prior to approval by the director.

v. If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property.

vi. Unless otherwise provided, or as a necessary part of an approved alteration, mitigation, or buffer management plan, removal of any vegetation or woody debris from a wildlife habitat conservation area or wetland, or required stream or wetland buffer, shall be prohibited.

b. Weed removal. The removal of the following invasive, nonnative and noxious weeds in conjunction with a mitigation plan or buffer management plan approved by the director, including revegetation with native plants. The director may require that only hand tools or light equipment be used for removal.

i. Invasive and noxious weeds identified in a list adopted by the city or county;

ii. English Ivy (*Hedera helix*);

iii. Himalayan blackberry (*Rubus discolor*, *R. procerus*) and evergreen blackberry (*Rubus laciniatus*);

iv. Scot's broom (*Cytisus scoparius*).

4. Public and private pedestrian paths and trails. Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and subject to approval by the director:

a. The trail or path is designed to minimize impacts to the critical area and its buffer. The trail is located on the outer edge of the buffer, except for areas which provide for public viewpoints or educational opportunities and which are designed to minimize the footprint of the trail/path within the critical area or its buffer. Trails and paths shall not be permitted when critical area functions will be substantially degraded.

b. The trail surface meets all other requirements including all applicable water quality standards. Use of pervious surfaces is encouraged.

c. Critical area and buffer widths shall be increased where possible, equal to the width of the trail corridor, including disturbed areas.

d. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

e. Public and quasi-public trails shall include interpretive signs identifying the critical area and buffer specific to the site.

5. Stormwater facilities are allowed in stream and wetland buffers subject to all of the following criteria:

a. Stormwater management facilities are permitted only within the outer twenty-five percent of the buffer.

b. The subject buffer area has been previously substantially and legally altered and is unvegetated, sparsely vegetated, and/or vegetated with nonnative or invasive species.

c. Stormwater facilities shall be integrated into the stream or wetland buffer as a natural drainage system. The slopes and all areas that are disturbed shall be planted with native vegetation consistent with a buffer enhancement/mitigation plan. Above ground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the natural design of the proposed facility and does not interfere with wildlife passage or adversely impact biological functions of the buffer or the adjacent critical area.

d. The location of a maintenance/access road is limited to the upland side of the facility outside the buffer.

e. The facilities must include a buffer enhancement and management plan that would improve the functional performance of the buffer and associated critical area.

f. All site development plans should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

For Type Np and Ns streams and category II, III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. A significant increase in wetland function shall be defined as no reduction in any individual function as measured by the Western Washington Wetland Rating System, and at least a five-point overall increase in the combined function score as measured by the Western Washington Wetland Rating System.

Is hereby amended to read as follows:

Permitted uses and activities.

A. Uses permitted on lots containing or adjoining critical areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this chapter and other city, state, and federal regulations.

B. The following uses/activities are permitted in critical areas and their buffers:

1. Minor utility construction projects. Utility projects which have minor or short-duration impacts to critical areas, provided such projects are constructed using best management practices to avoid and minimize impacts to critical areas and required buffers, subject to the following criteria:

- a. The activity does not significantly impact a Type F stream or category 1 wetland, or a fish and wildlife habitat conservation area; and
- b. There is no reasonable alternative to the proposed activity with less impact on the critical area; and
- c. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility; and
- d. The activity results in disturbing less than one hundred square feet of critical area and buffer.

2. Buffer management when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted:

a. Pruning. Pruning is limited to trimming, limbing, thinning, windowing, and skirting in a manner consistent with this subsection.

i. A permit is required to prune trees in critical areas. Prior to pruning, trimming, limbing, thinning, windowing, and/or skirting:

a) the applicant shall submit a pruning report by a certified arborist and have all work be performed under the direction of a certified arborist.

b) the applicant, in lieu of the above and an application fee as determined by the Planning Director, shall:

(i). submit a plan showing the location of the proposed work, using aerial photos or a site plan that accurately depicts the location of trees to be pruned;

(ii) submit photos of the trees to be pruned, a description of the portions of the tree to be removed by pruning, and documentation that the trees are located on property owned by the applicant;

(iii) sign a declaration stating that they have read and understand, and will comply with, the applicable City regulations

(iv) submit photos of the trees that were pruned after the work is completed.

c) the city shall review and issue the tree pruning permit upon submittal of a complete application that demonstrates the proposal complies with all applicable requirements;

d) the City shall conduct a site inspection upon completion of the work or any time thereafter if the work was done without a certified arborist to determine that the work has been conducted in accordance with City regulations.

ii. Pruning must adhere to the standards in ANSI A300, 2008 edition, or as subsequently amended.

iii. Pruning shall not result in the removal of more than 33 percent of the tree's crown.

iv. Pruning shall not include topping of trees unless underneath power lines.

v. Pruning activity shall not result in any soils disturbance on the site.

vi. A tree that is an active nest site for a species of local importance or provides critical habitat such as an eagle perch shall not be pruned.

vii. Topping trees or pruning trees in excess of 33 percent are considered a non-hazardous tree removal activity and therefore must comply with Section 3.c below.

viii. Once a tree is permitted to be pruned, it may be continued to be pruned but may not be pruned beyond 33 percent of the tree's original crown.

b. Hazard tree removal with replanting. The removal of hazard trees from critical areas and required buffers subject to the replanting of native trees to maintain critical area and buffer functions. Hazard trees are those trees that pose a threat to public safety, or pose an imminent risk of damage to private property.

i. The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, an assessment and recommendation from a certified arborist, registered landscape architect or professional forester that documents the hazard and provides a replanting schedule for replacement trees.

ii. Where hazards can be eliminated without complete removal of the tree, the director may require that a wildlife snag remain in the critical area or required buffer.

iii. Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two trees for every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan.

iv. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified biologist shall be consulted to determine timing and methods of removal that will minimize impacts. The biologist's report shall be circulated to agencies with expertise for review and comment prior to approval by the director.

v. If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property.

vi. Unless otherwise provided, or as a necessary part of an approved alteration, mitigation, or buffer management plan, removal of any vegetation or woody debris from a wildlife habitat conservation area or wetland, or required stream or wetland buffer, shall be prohibited.

c. Non-hazardous tree removal with replanting. Except as allowed under Subsection 2 of this Section, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow up to a maximum of 10% of all-non hazardous trees within the outer half of a critical area buffer to be removed. Removal of non-hazardous trees must comply with the following requirements.

i. Proposals to remove non-hazardous trees shall include a planting plan prepared by a qualified professional biologist, arborist, or forester unless waived by the Planning Director. The plan must show the number, size, and type of plants to be planted and where the plants will be located. The plants should be placed in an area within the buffer that will be most beneficial to the stream or wetland and an area where future cutting will not be necessary. A minimum of three, 3 to 5 gallon native trees of different variety must be planted for every tree to be removed unless it would create an overcrowded situation in

which case the Planning Director can reduce this ratio or allow shrubs to be planted as an alternative. On geologically hazardous slopes, the tree size shall be a minimum of 2 gallons or if bareroot an equivalent size. The Planning Director shall have discretion to reduce the number of trees to be cut if the proposed plan fails to replace over the long term the loss of functions and values of the buffer that may result from the cutting of trees. A tree inventory is required with the tree type and size shown on a site plan unless waived by the Planning Director. Only trees greater than a six-inch caliper within the outer half of the critical area buffer can be counted unless the trees to be removed are less than six-inch caliper.

- ii. Tree removal is limited to once every five years.
 - iii. A tree that is an active nest site for a species of local importance or provides critical habitat such as an eagle perch shall not be cut.
 - iv. If the buffer's edge has not been delineated and cannot be determined by the city, a wetland or stream buffer delineation will be required.
 - v. If the trees to be removed are on a geologically hazardous slope, a geological assessment letter or geotechnical report is required unless waived by the Planning Director. A geologically hazardous covenant must be recorded prior to tree cutting.
 - vi. Tree stumps must not be removed and all wood debris must be left within the buffer unless otherwise recommended by a biologist or geologist. A minimum of 25% of cut trees shall be left as snags approximately 20 feet tall unless within striking distance of structures, yards, or trails.
 - vii. Where the stump of a big-leaf maple or other tree with a similar growth habit that has been approved for removal remains in the buffer, branches that sprout from the stump may be removed annually.
 - viii. Prior to cutting, all trees to be cut must be marked, all required replacement plants must be on the property ready to be planted, and a Critical Areas covenant must be recorded. The replacement plants must be planted prior or immediately after the trees have been cut and placed in an area within the buffer that will be most beneficial to the stream or wetland.
 - ix. A survey may be required if trees are to be removed near any lot line.
 - x. Forest Practices – Where applicable, applications for tree removal shall also include a City of Everett Timber Harvest application and include an estimate of the number of board feet to be cut.
 - xi. Planting of additional trees beyond what is required in this section or buffer enhancement may be required if trees have been cut without planning director approval.
- d. Weed removal. The removal of the following invasive, nonnative and noxious weeds in conjunction with a mitigation plan or buffer management plan approved by the director, including revegetation with native plants. The director may require that only hand tools or light equipment be used for removal.
- i. Invasive and noxious weeds identified in a list adopted by the city or county;

- ii. English Ivy (*Hedera helix*);
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4. Public and private pedestrian paths and trails. Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and subject to approval by the director:
- a. The trail or path is designed to minimize impacts to the critical area and its buffer. The trail is located on the outer edge of the buffer, except for areas which provide for public viewpoints or educational opportunities and which are designed to minimize the footprint of the trail/path within the critical area or its buffer. Trails and paths shall not be permitted when critical area functions will be substantially degraded.
 - b. The trail surface meets all other requirements including all applicable water quality standards. Use of pervious surfaces is encouraged.
 - c. Critical area and buffer widths shall be increased where possible, equal to the width of the trail corridor, including disturbed areas.
 - d. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.
 - e. Public and quasi-public trails shall include interpretive signs identifying the critical area and buffer specific to the site.
5. Stormwater facilities are allowed in stream and wetland buffers subject to all of the following criteria:
- a. Stormwater management facilities are permitted only within the outer twenty-five percent of the buffer.
 - b. The subject buffer area has been previously substantially and legally altered and is unvegetated, sparsely vegetated, and/or vegetated with nonnative or invasive species.
 - c. Stormwater facilities shall be integrated into the stream or wetland buffer as a natural drainage system. The slopes and all areas that are disturbed shall be planted with native vegetation consistent with a buffer enhancement/mitigation plan. Above ground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the

natural design of the proposed facility and does not interfere with wildlife passage or adversely impact biological functions of the buffer or the adjacent critical area.

- d. The location of a maintenance/access road is limited to the upland side of the facility outside the buffer.
- e. The facilities must include a buffer enhancement and management plan that would improve the functional performance of the buffer and associated critical area.
- f. All site development plans should consider low impact stormwater management techniques where site conditions allow as described in the Low Impact Development Technical Guidance Manual for Puget Sound, January 2005.

For Type Np and Ns streams and category II, III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. A significant increase in wetland function shall be defined as no reduction in any individual function as measured by the Western Washington Wetland Rating System, and at least a five-point overall increase in the combined function score as measured by the Western Washington Wetland Rating System.

Section 3. Section 3B of Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16.080), which reads as follows:

Decisions included.

- A. Review Process II applications include the following administrative decisions:*
- 1. Alteration of a designated significant feature within an historic overlay zone;
- 2. Alteration of category II and III streams as provided by Section 19.33D.500(B)(2);
- 3. Atrium appurtenance approval as provided by Section 19.39.040(B)(2);
- 4. Buffer width reduction for streams (Sections 19.33D.490(D) and 19.37.170(C)) or wetlands (Sections 19.33D.450(E) and 19.37.110(C)) or alteration of geologically hazardous areas or standard buffer (Section 19.37.080(C)) if proposal is not categorically exempt under SEPA;
- 5. Change or expansion of a nonconforming use (up to twenty-five percent) as provided by Section 19.38.030(C) and (D);
- 6. Comprehensive design plan permits as provided by Section 19.36.210;
- 7. Design guideline approval, when proposal includes modification of development standards and design guidelines and for projects not categorically exempt under SEPA;

8. Determination of proportionality for correctional facilities;
9. Determination of prohibited heavy manufacturing uses with potentially noxious impacts in M-1 and M-M zones as provided by Sections 19.27.020(G)(19) and 19.28.020(D)(18);
10. Development of nonconforming lots which do not meet minimum lot area or building area requirements as provided by Section 19.38.080(C);
11. Development of previously altered ESAs when the proposal is not categorically exempt under SEPA as provided by Sections 19.33D.580(B)(1) and 19.37.250(B)(1);
12. Deviation from historic overlay zone standards and guidelines;
13. Driveway access from public street for multiple-family structures as provided by Section 19.15.080(B);
14. Extension of amateur radio tower or antenna beyond sixty-five feet (Section 19.39.040(A)(3));
15. Exterior finish for buildings in M-1 zone located within three hundred feet of residentially zoned properties (Section 19.27.020(A));
16. Final PDO development plan as provided by Section 19.29.110;
17. Floodplain development permit application when a shoreline permit is not required (Section 19.30.060(B));
18. Land divisions, as follows:
 - a. Preliminary binding site plan;
 - b. Preliminary binding site plan with site plan approval;
 - c. Preliminary residential condominium binding site plan;
 - d. Preliminary short subdivision alteration or vacation;
 - e. Preliminary short subdivision of nine lots or less;
 - f. Preliminary short subdivision with nonconforming structures;
 - g. Preliminary subdivision of fifty lots or less;**
 - h. Preliminary subdivision alteration or vacation;

- i. Subdivision or short subdivision variance as provided in Section 18.32.010;
- 19. Land uses in WRM zone consistent with adopted management plan when not categorically exempt under SEPA (Section 19.30A.020);
- 20. Minor expansion of an existing special property use;
- 21. Outdoor use, activity, and storage: modification of standards;
- 22. Parking modification of ten percent or less if supported by parking analysis and modification does not involve residential use parking standards as provided by Section 19.34.070(A);
- 23. Parking reduction with transportation management plan (Section 19.34.070(D));
- 24. Phase approval and development approval implementing an institutional overlay zone master plan or approval of minor revisions (cannot change use or character or allow increase in intensity of development) as provided by Section 19.33B.060;
- 25. Public park development not part of or in conformance with an adopted master plan or which exceeds the city's SEPA thresholds for categorical exemptions as provided by Section 19.33A.030;
- 26. Conceptual site plan review for projects that do not otherwise require a land use permit and are not categorically exempt under SEPA;
- 27. Project review for public projects that are not categorically exempt under SEPA;
- 28. Proposals required to be reviewed by the historic commission in the historic overlay zone per neighborhood conservation guidelines and historic zoning overlay standards (not including those listed under administrative review by staff, which is Review Process I);
- 29. Reasonable use determinations with modification of zoning standards (under Chapter 19.37);
- 30. Reestablishment or change in use of nonconforming grocery store as provided by Section 19.38.100(B)(1);
- 31. Shoreline permits (less than one acre of the project footprint area is within shoreline jurisdiction);
- 32. Stream and wetland filling, modification, and mitigation as provided for in Chapter 19.37;
- 33. Transfer of development rights under Section 19.33D.400(D) or 19.37.050(B)(3);

34. Wetland alteration for Category I, Category II and Silver Lake watershed as provided by Sections 19.33D.460(B)(1), (2), and (5) and 19.37.110(B)(1), (2), and (3);
 35. Wetland mitigation banking approval as provided by Sections 19.33D.460(C)(10) and 19.37.120(C)(12);
 36. Clinic- and medical-related activities as provided by Section 19.16.040(C);
 37. All other review processes listed in the zoning code as Review Process II;
 38. All Review Process I and project permit applications that are not categorically exempt under SEPA;
 39. Alternative best available science decisions as provided by Section 19.37.050(E);
 40. Accessory buildings over two hundred square feet which have metal siding or corrugated roofing as provided by Section 19.07.020(K);
 41. Accessory buildings which exceed one thousand square feet in area as provided by Section 19.07.020(M);
 42. Accessory buildings which exceed fifteen feet in height as provided by Section 19.07.020(J);
 43. Rockeries and retaining walls retaining soil (fill) four feet or greater in height in required building setback areas, as provided by Section 19.39.150(C)(5)(d).
 44. Use of basement or other building spaces for uses not specifically listed as permitted use in the B-3 as provided by Section 19.22.030.
- * SEPA threshold determinations frequently include mitigation requirements as provided for in the SEPA ordinance (Chapter 20.04). Any SEPA condition based on SEPA substantive authority as provided for in the SEPA ordinance (Chapter 20.04) shall be identified in the land use permit decision, as provided in this integrated local project review process.
- ** An open public hearing may be required under the following circumstances, in which case the application shall be processed under Review Process III: (i) a public hearing is required by Title 18; (ii) any affected person files a written request for a hearing with the planning department within twenty-one days of the notice of application (public comment period); or (iii) either prior to or within the public comment period, the director or the city engineer and/or their designees require an open public hearing.

Is hereby amended to read as follows:

Decisions included.

A. Review Process II applications include the following administrative decisions:*

1. Alteration of a designated significant feature within an historic overlay zone;
2. Alteration of category II and III streams as provided by Section 19.33D.500(B)(2);
3. Atrium appurtenance approval as provided by Section 19.39.040(B)(2);
4. Buffer width reduction for streams (Sections 19.33D.490(D) and 19.37.170(C)) or wetlands (Sections 19.33D.450(E) and 19.37.110(C)) or alteration of geologically hazardous areas or standard buffer (Section 19.37.080(C)) if proposal is not categorically exempt under SEPA;
5. Change or expansion of a nonconforming use (up to twenty-five percent) as provided by Section 19.38.030(C) and (D);
6. Comprehensive design plan permits as provided by Section 19.36.210;
7. Design guideline approval, when proposal includes modification of development standards and design guidelines and for projects not categorically exempt under SEPA;
8. Determination of proportionality for correctional facilities;
9. Determination of prohibited heavy manufacturing uses with potentially noxious impacts in M-1 and M-M zones as provided by Sections 19.27.020(G)(19) and 19.28.020(D)(18);
10. Development of nonconforming lots which do not meet minimum lot area or building area requirements as provided by Section 19.38.080(C);
11. Development of previously altered ESAs when the proposal is not categorically exempt under SEPA as provided by Sections 19.33D.580(B)(1) and 19.37.250(B)(1);
12. Deviation from historic overlay zone standards and guidelines;
13. Driveway access from public street for multiple-family structures as provided by Section 19.15.080(B);
14. Extension of amateur radio tower or antenna beyond sixty-five feet (Section 19.39.040(A)(3));
15. Exterior finish for buildings in M-1 zone located within three hundred feet of residentially zoned properties (Section 19.27.020(A));
16. Final PDO development plan as provided by Section 19.29.110;

17. Floodplain development permit application when a shoreline permit is not required (Section 19.30.060(B));
18. Land divisions, as follows:
 - a. Preliminary binding site plan;
 - b. Preliminary binding site plan with site plan approval;
 - c. Preliminary residential condominium binding site plan;
 - d. Preliminary short subdivision alteration or vacation;
 - e. Preliminary short subdivision of nine lots or less;
 - f. Preliminary short subdivision with nonconforming structures;
 - g. Preliminary subdivision of fifty lots or less;**
 - h. Preliminary subdivision alteration or vacation;
 - i. Subdivision or short subdivision variance as provided in Section 18.32.010;
19. Land uses in WRM zone consistent with adopted management plan when not categorically exempt under SEPA (Section 19.30A.020);
20. Minor expansion of an existing special property use;
21. Outdoor use, activity, and storage: modification of standards;
22. Parking modification of ten percent or less if supported by parking analysis and modification does not involve residential use parking standards as provided by Section 19.34.070(A);
23. Parking reduction with transportation management plan (Section 19.34.070(D));
24. Phase approval and development approval implementing an institutional overlay zone master plan or approval of minor revisions (cannot change use or character or allow increase in intensity of development) as provided by Section 19.33B.060;
25. Public park development not part of or in conformance with an adopted master plan or which exceeds the city's SEPA thresholds for categorical exemptions as provided by Section 19.33A.030;

26. Conceptual site plan review for projects that do not otherwise require a land use permit and are not categorically exempt under SEPA;
27. Project review for public projects that are not categorically exempt under SEPA;
28. Proposals required to be reviewed by the historic commission in the historic overlay zone per neighborhood conservation guidelines and historic zoning overlay standards (not including those listed under administrative review by staff, which is Review Process I);
29. Reasonable use determinations with modification of zoning standards (under Chapter 19.37);
30. Reestablishment or change in use of nonconforming grocery store as provided by Section 19.38.100(B)(1);
31. Shoreline permits (less than one acre of the project footprint area is within shoreline jurisdiction);
32. Stream and wetland filling, modification, and mitigation as provided for in Chapter 19.37;
33. Transfer of development rights under Section 19.33D.400(D) or 19.37.050(B)(3);
34. Wetland alteration for Category I, Category II and Silver Lake watershed as provided by Sections 19.33D.460(B)(1), (2), and (5) and 19.37.110(B)(1), (2), and (3);
35. Wetland mitigation banking approval as provided by Sections 19.33D.460(C)(10) and 19.37.120(C)(12);
36. Clinic- and medical-related activities as provided by Section 19.16.040(C);
37. All other review processes listed in the zoning code as Review Process II;
38. All Review Process I and project permit applications that are not categorically exempt under SEPA;
39. Alternative best available science decisions as provided by Section 19.37.050(E);
40. Accessory buildings over two hundred square feet which have metal siding or corrugated roofing as provided by Section 19.07.020(K);
41. Accessory buildings which exceed one thousand square feet in area as provided by Section 19.07.020(M);
42. Accessory buildings which exceed fifteen feet in height as provided by Section 19.07.020(J);

43. Rockeries and retaining walls retaining soil (fill) four feet or greater in height in required building setback areas, as provided by Section 19.39.150(C)(5)(d).
44. Use of basement or other building spaces for uses not specifically listed as permitted use in the B-3 as provided by Section 19.22.030.
45. Buffer Management as provided by Section 19.37.060.B.2.
46. Removal of non-hazardous trees as provided by Section 19.37.060.B.3.c
- * SEPA threshold determinations frequently include mitigation requirements as provided for in the SEPA ordinance (Chapter 20.04). Any SEPA condition based on SEPA substantive authority as provided for in the SEPA ordinance (Chapter 20.04) shall be identified in the land use permit decision, as provided in this integrated local project review process.
- ** An open public hearing may be required under the following circumstances, in which case the application shall be processed under Review Process III: (i) a public hearing is required by Title 18; (ii) any affected person files a written request for a hearing with the planning department within twenty-one days of the notice of application (public comment period); or (iii) either prior to or within the public comment period, the director or the city engineer and/or their designees require an open public hearing.

Section 4. Severability. Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 5. Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 6. Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 7. General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is

intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 8. Enforcement. Violations of this Ordinance are punishable under Everett Municipal Code, Chapters 1.16 and 1.20, and as otherwise provided by law and in Everett Municipal Code 1.20.020, and are subject to injunctive and other forms of relief which the City may seek.


Ray Stephanson, Mayor

ATTEST: 
CITY CLERK

Passed: 4-3-13

Valid: 4-8-13

Published: 4-11-13

Effective Date: 4-23/13